

SALES TAX RULES COMMITTEE MEETING AGENDA
WEDNESDAY, AUGUST 22, 2012
10:00 AM
IDAHO STATE TAX COMMISSION
ROOM 1CR5

GENERAL BUSINESS:

Welcome & Introduction

SALES TAX RULES DISCUSSION:

Rule 037 (Draft 5). Aircraft & Flying Services – Clarify exemption for aircraft used to transport freight and passengers for hire; Address recently enacted legislation exempting sales of repair parts installed into aircraft owned by nonresidents

ADJOURN

Please contact [Shelley Sheridan](#) (208) 334-7544 if you have questions or are interested in attending.

RULE 037

AIRCRAFT AND FLYING SERVICES

NOTICE OF INTENT

Sales Tax Rule 037 is being amended to clarify the exemption for the purchase and use of aircraft primarily utilized in transporting freight or passengers, to define several terms in relation to that exemption, and to reflect statutory changes enacted in the last legislative session that exempted the sales of repair parts installed into aircraft owned by a nonresident.

RELEVANT LEGISLATIVE CHANGES

House Bill 417 **Statement of Purpose**

The purpose of this amendment to existing law is to create new, good paying jobs at the 26 FAA-approved Idaho businesses specializing in repair and maintenance of fixed and rotary wing aircraft by eliminating the disadvantage Idaho businesses have competing with similar businesses located in states that do not impose taxes on parts installed on privately owned aircraft.

This change in Idaho law will make the taxation of parts installed on private aircraft owned by non-residents consistent with the taxation of parts installed as components of aircraft manufactured in Idaho and sold to non-residents, as well as parts installed on aircraft in commercial use. This Act does not change the taxation of parts purchased by or installed on aircraft owned by Idaho residents.

Law as Amended

63-3622GG. AIRCRAFT. There is exempted from the taxes imposed by this chapter:

- (1) The sale, lease, purchase, or use of aircraft primarily used to provide passenger or freight services for hire as a common carrier only if:
 - (a) The person operates the aircraft under the authority of the laws of this state, the United States or any foreign government; and
 - (b) The aircraft is used to provide services indiscriminately to the public; and
 - (c) The aircraft itself transports the person or property from one (1) location on the ground or water to another.
- (2) The sale, lease, purchase or use of aircraft primarily used for air ambulance services.
- (3) The sale, lease or purchase of aircraft for use outside this state by nonresidents, even though delivery be made within this state, but only when:
 - (a) The aircraft will be taken from the point of delivery to a point outside this state;
 - (b) The aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period.

(4) Repair and replacement materials and parts installed in or affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the remodeling, repair or maintenance of aircraft described under subsections (1) and (2) of this section **and industry standard, federal aviation administration (FAA) approved materials, parts and components installed on non-resident privately owned aircraft by qualified employees of an FAA approved Idaho repair station** are exempt. Tools and equipment utilized in performing such remodeling, repair or maintenance are not exempt.

SECTION 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval. The provisions of this act shall be null, void and of no force and effect on and after June 30, 2016.

DRAFT 5

037. AIRCRAFT AND FLYING SERVICES (RULE 037).

01. Definitions. For the purposes of this rule, the following terms have the following meanings: (7-1-94)

a. Recreational Flight. The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)

b. Freight. Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)

c. Transportation of Passengers. The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

d. Nonresident Individual. An individual as defined by Section 63-3014, Idaho Code. (7-1-94)

e. Nonresident Businesses and Other Organizations. A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state, and does not have consistent operations in this state. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more ~~airplanes aircraft or other aircraft~~ is not a nonresident. The use of an ~~airplane aircraft~~ owned by such an entity will be subject to use tax upon its first use in Idaho. (4-7-11)()

f. Day. For the purpose of this rule any part of a day is a day. (7-1-94)

g. Transportation of freight or passengers for hire. “Transportation of freight or passengers for hire” means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. ~~Such transportation must be offered indiscriminately to the general public. Entities such as LLCs or closely held corporations, that only transport related parties, including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire.~~ (3-4-10)()

h. Common Carrier. The operation of an aircraft in the transportation of freight or passengers for hire by members of the public. When operating as a common carrier, the operator or owner of an aircraft usually charges a rate that will generate a profit. For flights in which federal regulations limit or minimize this profit, the aircraft is likely not operating as a common carrier. ()

i. Public. The public does not include: ()

i. Owners of the aircraft; ()

ii. Employees of the aircraft owner or operator; ()

iii. Guests of the aircraft owner or operator; ()

iv. Any of the above with the same relationship to a parent of the aircraft owner, a subsidiary of that parent, or a subsidiary of the aircraft owner; ()

v. An individual or entity flying under a time sharing agreement which is an arrangement where an aircraft owner leases his aircraft with flight crew to another individual or entity and the aircraft owner limits the amount charged in accordance with federal regulations; and ()

vi. An individual or entity flying under an interchange agreement which is an arrangement where an aircraft owner leases his aircraft to another aircraft owner in exchange for equal time on the other owner's aircraft and any fees charged may not exceed the difference between the costs of owning, operating, and maintaining the two aircraft. ()

02. Sales of Aircraft. Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: (4-11-06)

a. Primarily used to ~~transport passengers or freight for hire~~ provide passenger or freight services for hire as a common carrier; (~~2-18-02~~)()

b. Primarily used for emergency transportation of sick or injured persons; or (2-18-02)

c. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)

i. The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and (3-30-07)

ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (3-20-04)

03. Sales of Aircraft Repair Parts to Nonresidents. Subject to the restrictions of Section 63-3622GG, Idaho Code, sales of aircraft repair parts are exempt from tax when installed on an aircraft owned by a nonresident individual or business as defined in Subsection 01 of this rule. ()

03.04. Federal Law Prohibits States From Taxing Sales of Air Transportation. See 49 U.S.C. Section 40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (~~4-11-06~~)()

04.05. Rentals and Leases of Aircraft. The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. (~~4-11-06~~)()

05.06. Aerial Contracting Services. Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. (~~4-11-06~~)()

a. Aircraft purchased, rented, or leased for aerial contracting are subject to sales tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (7-1-94)()

b. When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (4-11-06)

06.07. Air Ambulance Service. Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. (7-1-94)()

07.08. Flying Instructions. Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. (7-1-94)()

a. Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)

b. When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)

08.09. Recreational Flights. Sales and purchase of aircraft used primarily for providing recreational flights are subject to sales or use tax. (4-11-06)()

09.10. Aircraft Held for Resale. Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. (7-1-94)()

a. Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule. (7-1-93)

b. When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. (7-1-94)

c. Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

10.11. Fuel. The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. (7-1-94)()